

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 528**

Introduced by Aguilar, 35

Read first time January 17, 2007

Committee: Government, Military and Veterans Affairs

A BILL

1 FOR AN ACT relating to elections; to amend sections 32-230, 32-232,  
2 32-235, 32-612, 32-904, 32-906, 32-909, 32-1001, 32-1004,  
3 32-1010, 32-1012, and 32-1049, Reissue Revised Statutes  
4 of Nebraska, and sections 32-808, 32-1002, and 32-1041,  
5 Revised Statutes Cumulative Supplement, 2006; to change  
6 provisions relating to changing political parties and  
7 issuing ballots for early voting; to change and eliminate  
8 provisions relating to counting ballots; to harmonize  
9 provisions; to repeal the original sections; and to  
10 outright repeal sections 32-224, 32-234, 32-1011, 32-234,  
11 32-1011, 32-1019, 32-1020, 32-1021, 32-1022, 32-1023,  
12 32-1024, 32-1025, and 32-1026, Reissue Revised Statutes  
13 of Nebraska.

14 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 32-230, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           32-230 (1) As provided in subsection (5) of this section,  
4 the precinct committeeman and committeewoman of each political  
5 party shall appoint a receiving board consisting of three judges  
6 of election and two clerks of election except as provided in  
7 subsection (3) of this section, ~~and a counting board if required~~  
8 ~~pursuant to section 32-234 consisting of two judges of election~~  
9 ~~and two clerks of election.~~ The chairperson of the county central  
10 committee of each political party shall send the names of the  
11 appointments to the county clerk no later than February 1 prior to  
12 the primary election.

13           (2) If no names are submitted by the chairperson, the  
14 county clerk shall appoint judges or clerks of election from the  
15 appropriate political party. Judges and clerks of election may be  
16 selected at random from a cross section of the population of the  
17 county. All qualified citizens shall have the opportunity to be  
18 considered for service. All qualified citizens shall fulfill their  
19 obligation to serve as judges or clerks of election as prescribed  
20 by the county clerk. No citizen shall be excluded from service as  
21 a result of discrimination based upon race, color, religion, sex,  
22 national origin, or economic status. No citizen shall be excluded  
23 from service unless excused by reason of ill health or other good  
24 and sufficient reason.

25           (3) In precincts in which electronic voting systems are

1 used, the receiving board shall have at least three members.

2 (4) The county clerk may allow persons serving on a  
3 receiving board to serve for part of the time the polls are open  
4 and appoint other persons to serve on the same receiving board for  
5 the remainder of the time the polls are open.

6 (5) In each precinct at any one time, one judge and  
7 one clerk of election shall be appointed from the political party  
8 casting the highest number of votes in the county for Governor or  
9 for President of the United States in the immediately preceding  
10 general election, one judge and one clerk shall be appointed from  
11 the political party casting the next highest number of votes in  
12 the county for Governor or for President of the United States in  
13 the immediately preceding general election, and one judge shall  
14 be appointed from the political party casting the third highest  
15 number of votes in the county for Governor or for President of  
16 the United States in the immediately preceding general election.  
17 If the political party casting the third highest number of votes  
18 cast less than ten percent of the total vote cast in the county  
19 at the immediately preceding general election, the political party  
20 casting the highest number of votes at the immediately preceding  
21 general election shall be entitled to two judges and one clerk. ~~If~~  
22 ~~a counting board is required pursuant to section 32-234, one judge~~  
23 ~~and one clerk of election shall be appointed to be members of the~~  
24 ~~counting board from the political party casting the highest number~~  
25 ~~of votes for Governor or for President of the United States in the~~

1 county in the immediately preceding general election and one judge  
2 and one clerk of election shall be appointed to be members of the  
3 counting board from the political party casting the next highest  
4 number of votes.

5 (6) The county clerk may appoint registered voters to  
6 serve in case of a vacancy among any of the judges or clerks of  
7 election or in addition to the judges and clerks in any precinct  
8 when necessary to meet any situation that requires additional  
9 judges and clerks. Such appointees may include registered voters  
10 unaffiliated with any political party. Such appointees shall serve  
11 at subsequent or special elections as determined by the county  
12 clerk.

13 (7) The county clerk may appoint a person who is at  
14 least sixteen years old but is not eligible to register to vote  
15 as a clerk of election. Such clerk of election shall meet the  
16 requirements of subsection (1) of section 32-231, except that  
17 such clerk shall not be required to be a registered voter. No  
18 more than one clerk of election appointed under this subsection  
19 shall serve at any precinct. A clerk of election appointed under  
20 this subsection shall be considered a registered voter who is not  
21 affiliated with a political party for purposes of this section.

22 Sec. 2. Section 32-232, Reissue Revised Statutes of  
23 Nebraska, is amended to read:

24 32-232 (1) Any clerk of election may perform the duties  
25 of a judge of election, and any judge of election may perform the

1 duties of a clerk of election. The county clerk may excuse two  
2 clerks of election from serving at any election, and the judges of  
3 election shall perform such duties without additional compensation.

4 (2) The county clerk shall designate one of the members  
5 of the receiving board as a messenger. The messenger shall receive  
6 from the county clerk the ballots and other equipment necessary  
7 for holding the election in the precinct for which he or she is  
8 a judge or clerk and shall deliver them to the polling place in  
9 his or her precinct at least one hour before the time provided by  
10 section 32-908 for opening the polls. The messenger shall return  
11 the ballots and other equipment to the county clerk as soon as  
12 possible after the votes are counted. ~~In precincts which have a~~  
13 ~~counting board, a messenger shall be designated by the county clerk~~  
14 ~~from the members of the counting board to return the ballots and~~  
15 ~~equipment to the county clerk.~~

16 Sec. 3. Section 32-235, Reissue Revised Statutes of  
17 Nebraska, is amended to read:

18 32-235 (1) The county clerk shall, by mail, notify judges  
19 and clerks of election, district inspectors, members of counting  
20 boards, and members of canvassing boards of their appointment. The  
21 notice shall inform the appointee of his or her appointment and of  
22 the date and time he or she is required to report to the office  
23 of the county clerk or other designated location and the polling  
24 place. The notice shall be mailed at least fifteen days prior to  
25 each statewide primary and general election. The county clerk shall

1 order the members of the receiving board ~~and the members of the~~  
2 ~~counting board~~ to appear at their respective polling place on the  
3 day and at the hour specified in the notice of appointment.

4 (2) Each appointee shall, at the time fixed in the notice  
5 of appointment, report to the office or other location to complete  
6 any informational forms and receive training regarding his or her  
7 duties. The training shall include instruction as required by the  
8 Secretary of State and any other training deemed necessary by the  
9 county clerk.

10 Sec. 4. Section 32-612, Reissue Revised Statutes of  
11 Nebraska, is amended to read:

12 32-612 (1) A change of political party affiliation by a  
13 registered voter so as to affiliate with the political party named  
14 in the candidate filing form or in an affidavit as a write-in  
15 candidate pursuant to section 32-615 after the first Friday in  
16 December prior to the statewide primary election shall not be  
17 effective to meet the requirements of section 32-610 or 32-611 or  
18 subsection (4) of this section, except that any person may change  
19 his or her political party affiliation after the first Friday  
20 in December prior to the statewide primary election to become a  
21 candidate of a new political party which has successfully completed  
22 the petition process required by section 32-716.

23 (2) No registered voter, candidate, or proposed candidate  
24 shall swear falsely as to political party affiliation or shall  
25 swear that he or she affiliates with two or more political parties.

1 Any candidate who swears falsely as to political party affiliation  
2 or swears that he or she affiliates with two or more political  
3 parties shall not be the candidate of such party and shall not be  
4 entitled to assume the office for which he or she filed even if he  
5 or she receives a majority or plurality of the votes therefor at  
6 the following general election.

7 (3) The name of a candidate shall not appear printed  
8 on more than one political party ballot. A candidate who is a  
9 registered voter of one political party shall not accept the  
10 nomination of another political party.

11 (4) In order to count write-in votes on a political party  
12 ballot in the primary election, the candidate who receives the  
13 votes must be a registered voter of that political party unless the  
14 political party allows candidates not affiliated with the party by  
15 not adopting a rule under section 32-702.

16 Sec. 5. Section 32-808, Revised Statutes Cumulative  
17 Supplement, 2006, is amended to read:

18 32-808 (1) Ballots for early voting and applications  
19 shall be ready for delivery to registered voters at least  
20 thirty-five days prior to each statewide primary or general  
21 election and at least fifteen days prior to all other elections.

22 (2) Notwithstanding subsection (1) of this section, upon  
23 request for a ballot, a ballot for early voting shall be forwarded  
24 to each voter meeting the criteria of section 32-939 at least  
25 forty-five days prior to any election. The election commissioner

1 or county clerk shall not forward any ballot for early voting if  
2 the election to which such ballot pertains has already been held.  
3 If the ballot has not been printed in sufficient time to meet  
4 the requirements of this subsection, the election commissioner or  
5 county clerk shall issue a special ballot at least ~~fifty-seven~~  
6 sixty days prior to an election to each voter meeting the criteria  
7 of section 32-939 upon the written request by such voter requesting  
8 the special ballot. A complete list of the nominated candidates  
9 and issues to be voted upon by a voter meeting the criteria of  
10 such section shall be included with the special ballot by the  
11 election commissioner or county clerk. A notice shall be sent with  
12 the primary election ballot stating that the voter must request a  
13 general election ballot unless such voter has requested both the  
14 primary and general election ballots. If the voter has requested  
15 both ballots, a notice shall be sent with the primary election  
16 ballot stating that the general election ballot will be sent to the  
17 same address unless otherwise notified.

18 (3) For purposes of this section, a special ballot means  
19 a ballot prescribed by the Secretary of State which contains  
20 the titles of all offices being contested at such election and  
21 permits the voter to vote by writing in the names of the specific  
22 candidates or the decision on any issue.

23 (4) The election commissioner or county clerk shall  
24 publish in a newspaper of general circulation in the county an  
25 application form to be used by registered voters in making an

1 application for a ballot for early voting after the ballots become  
2 available. The publication of the application shall not be required  
3 if the election is held by mail pursuant to sections 32-952 to  
4 32-959.

5           Sec. 6. Section 32-904, Revised Statutes Cumulative  
6 Supplement, 2006, is amended to read:

7           32-904 The election commissioner or county clerk shall  
8 designate the polling places for each precinct at which the  
9 registered voters of the precinct will cast their votes. Polling  
10 places representing different precincts may be combined at a  
11 single location when potential sites cannot be found, contracts for  
12 utilizing polling sites cannot be obtained, or a potential site  
13 is not accessible to handicapped persons. When combining polling  
14 places at a single site for an election other than a special  
15 election, the election commissioner or county clerk shall clearly  
16 separate the polling places from each other and maintain separate  
17 receiving and ~~counting~~ boards. When combining polling places at  
18 a single site for a special election, the election commissioner  
19 or county clerk may combine the polling places and receiving  
20 ~~and counting~~ boards. Polling places shall not be changed between  
21 the statewide primary and general elections unless the election  
22 commissioner or county clerk has been authorized to make such  
23 change by the Secretary of State. If changes are authorized, the  
24 election commissioner or county clerk shall notify each state  
25 and local candidate affected by the change. Notwithstanding any

1 other provision of the Election Act, the Secretary of State may  
2 adopt and promulgate rules and regulations, with the consent of  
3 the appropriate election commissioner or county clerk, for the  
4 establishment of polling places which may be used for voting  
5 pursuant to section 32-1041 for the twenty days preceding the day  
6 of election. Such polling places shall be in addition to the office  
7 of the election commissioner or county clerk and the polling places  
8 otherwise established pursuant to this section.

9           Sec. 7. Section 32-906, Reissue Revised Statutes of  
10 Nebraska, is amended to read:

11           32-906 (1) The election commissioner or county clerk  
12 shall provide each polling place with ballot boxes, ballot box  
13 locks and keys, and a sufficient number of voting booths furnished  
14 with supplies and conveniences to enable each registered voter to  
15 prepare his or her ballot for voting and to secretly mark his or  
16 her ballot. One voting booth shall be provided for approximately  
17 every one hundred registered voters in the precinct. The election  
18 commissioner or county clerk may increase or decrease the number  
19 of voting booths to accommodate the expected voter turnout of any  
20 election other than a statewide election. ~~In precincts required to~~  
21 ~~have a counting board pursuant to section 32-224 or 32-234, the~~  
22 ~~county shall provide an enclosed compartment for the use of the~~  
23 ~~counting board.~~

24           (2) When there is no structure within the precinct  
25 suitable for use as a polling place, the election commissioner or

1 county clerk may designate a polling place outside the precinct  
2 and convenient thereto which shall be provided with voting booths  
3 furnished with supplies and conveniences and, when utilized, an  
4 enclosed compartment for use of the counting board as are other  
5 polling places.

6 (3) Standards for polling places shall include any  
7 applicable standards developed under sections 81-5,147 and  
8 81-5,148.

9 Sec. 8. Section 32-909, Revised Statutes Cumulative  
10 Supplement, 2006, is amended to read:

11 32-909 Before any ballot is deposited in the ballot box,  
12 the ballot box shall be publicly opened and exhibited and the  
13 judges and clerks of election shall see that no ballot is in the  
14 box. The ballot box shall then be locked and the key delivered to  
15 one of the judges of election or, in counties having an election  
16 commissioner, to the precinct inspector. If paper ballots are being  
17 used that will be manually counted, a ballot box containing such  
18 ballots shall not be opened again until opened by the counting  
19 board. A ballot box which contains ballots that will be counted  
20 using a scanner may be opened prior to the hour established by law  
21 for the closing of the polls at the discretion of the election  
22 commissioner or county clerk.

23 Sec. 9. Section 32-1001, Reissue Revised Statutes of  
24 Nebraska, is amended to read:

25 32-1001 After the polls have closed, the precinct list of

1 registered voters and the precinct sign-in register shall be signed  
2 by all members of the receiving board, the names of the registered  
3 voters shall be counted, and the number shall be recorded where  
4 designated on the list and the register. If a line is missed or a  
5 name is voided, the receiving board shall subtract such omissions  
6 or voids from the total before recording the total on the list  
7 and the register. The receiving board shall certify to all matters  
8 pertaining to casting of ballots and shall turn over the ballots,  
9 ballot boxes, list of registered voters, and sign-in register to  
10 the ~~counting board~~ election commissioner or county clerk.

11 Sec. 10. Section 32-1002, Revised Statutes Cumulative  
12 Supplement, 2006, is amended to read:

13 32-1002 (1) As the ballots are removed from the ballot  
14 box pursuant to sections ~~32-1011 to 32-1026~~, 32-1012 to 32-1018,  
15 the receiving board ~~or counting board~~ shall separate the envelopes  
16 containing the provisional ballots from the rest of the ballots and  
17 deliver them to the election commissioner or county clerk.

18 (2) Upon receipt of a provisional ballot, the election  
19 commissioner or county clerk shall verify that the certificate on  
20 the front of the envelope or the form attached to the envelope is  
21 in proper form and that the certification has been signed by the  
22 voter.

23 (3) The election commissioner or county clerk shall  
24 also (a) verify that such person has not voted anywhere else in  
25 the county or been issued an absentee ballot, (b) investigate

1 whether any credible evidence exists that the person was  
2 properly registered to vote in the county before the deadline  
3 for registration for the election, (c) investigate whether any  
4 information has been received pursuant to section 32-309, 32-310,  
5 or 32-324 that the person has resided, registered, or voted in any  
6 other county or state since registering to vote in the county,  
7 and (d) upon determining that credible evidence exists that the  
8 person was properly registered to vote in the county, make the  
9 appropriate changes to the voter registration register by entering  
10 the information contained in the registration application completed  
11 by the voter at the time of voting a provisional ballot.

12 (4) A provisional ballot cast by a voter pursuant to  
13 section 32-915 shall be counted if:

14 (a) Credible evidence exists that the voter was properly  
15 registered in the county before the deadline for registration for  
16 the election;

17 (b) The voter has resided in the county continuously  
18 since registering to vote in the county;

19 (c) The voter has not voted anywhere else in the county  
20 or has not otherwise voted early using a ballot for early voting;

21 (d) The voter has completed a registration application  
22 prior to voting and:

23 (i) The residence address provided on the registration  
24 application completed pursuant to subdivision (1)(e) of section  
25 32-915 is located within the precinct in which the person voted;

1 and

2 (ii) If the voter is voting in a primary election,  
3 the party affiliation provided on the registration application  
4 completed prior to voting the provisional ballot is the same party  
5 affiliation that appears on the voter's voter registration record  
6 based on his or her previous registration application; and

7 (e) The certification on the front of the envelope or  
8 form attached to the envelope is in the proper form and signed by  
9 the voter.

10 (5) A provisional ballot cast by a voter pursuant to  
11 section 32-915 shall not be counted if:

12 (a) The voter was not properly registered in the county  
13 before the deadline for registration for the election;

14 (b) Information has been received pursuant to section  
15 32-309, 32-310, or 32-324 that the voter has resided, registered,  
16 or voted in any other county or state since registering to vote in  
17 the county in which he or she cast the provisional ballot;

18 (c) Credible evidence exists that the voter has voted  
19 elsewhere or has otherwise voted early;

20 (d) The voter failed to complete and sign a registration  
21 application pursuant to subdivision (1)(e) of section 32-915;

22 (e) The residence address provided on the registration  
23 application completed pursuant to subdivision (1)(e) of section  
24 32-915 is in a different county or in a different precinct than the  
25 county or precinct in which the voter voted;

1           (f) If the voter is voting in a primary election, the  
2 party affiliation on the registration application completed prior  
3 to voting the provisional ballot is different than the party  
4 affiliation that appears on the voter's voter registration record  
5 based on his or her previous registration application; or

6           (g) The voter failed to complete and sign the  
7 certification on the envelope or form attached to the envelope  
8 pursuant to subsection (3) of section 32-915.

9           (6) Upon determining that the voter's provisional ballot  
10 is eligible to be counted, the election commissioner or county  
11 clerk shall remove the ballot from the envelope without exposing  
12 the marks on the ballot and shall place the ballot with the ballots  
13 to be counted by the county canvassing board.

14           (7) The election commissioner or county clerk shall  
15 notify the system administrator of the system created pursuant to  
16 section 32-202 as to whether the ballot was counted and, if not,  
17 the reason the ballot was not counted.

18           (8) The verification and investigation shall be completed  
19 within seven days after the election.

20           Sec. 11. Section 32-1004, Reissue Revised Statutes of  
21 Nebraska, is amended to read:

22           32-1004 If a ballot has been overvoted for any office,  
23 the ballot shall be rejected for that office only. No overvoted  
24 ballot shall be judged for voter intent by any member of the  
25 counting board or any official involved in the counting process.

1 The counting board in counties which count ballots manually shall  
2 make the following notation on the rejected ballots: Rejected for  
3 the office of ....., overvoted.

4 Sec. 12. Section 32-1010, Reissue Revised Statutes of  
5 Nebraska, is amended to read:

6 32-1010 Ballots may shall be counted ~~(1)~~ or compiled at  
7 a centralized location as provided in sections ~~32-1011~~ 32-1012 to  
8 32-1018. The receiving board shall deliver the ballot box and other  
9 election materials to the centralized location as directed by the  
10 election commissioner or county clerk. ~~or (2)~~ in the precinct by  
11 the receiving board which becomes the counting board after the  
12 polls are closed or by a counting board that is separate from the  
13 receiving board as provided in sections ~~32-1019~~ to ~~32-1026~~. Each  
14 counting board shall complete its duties and certify to all matters  
15 pertaining to the counting of votes.

16 Sec. 13. Section 32-1012, Reissue Revised Statutes of  
17 Nebraska, is amended to read:

18 32-1012 In counties using electronic voting systems or  
19 optical scanners to count the ballots, the election commissioner  
20 or county clerk may arrange to have partial returns delivered,  
21 properly locked or sealed, to the centralized location or locations  
22 at any time desired after the opening of the polls if at least  
23 twenty-five ballots have been cast since any prior delivery of  
24 ballots. The election commissioner or county clerk shall designate  
25 the location or locations for counting the ballots and may

1 designate a location or locations in any county. Upon completion  
2 of the count, the ballots shall be conveyed under supervision of  
3 the election commissioner or county clerk to the office of such  
4 official. If for any reason it becomes impracticable to count  
5 all or a part of the ballots with optical scanners, the election  
6 commissioner or county clerk may direct that the ballots be counted  
7 manually following as closely as possible the provisions governing  
8 the manual counting of ballots.

9           Sec. 14. Section 32-1041, Revised Statutes Cumulative  
10 Supplement, 2006, is amended to read:

11           32-1041 The election commissioner or county clerk may use  
12 ~~paper ballots,~~ optical-scan ballots, or voting systems approved by  
13 the Secretary of State to allow registered voters to cast their  
14 votes at any election. ~~Paper ballots may be used in combination~~  
15 ~~with other methods of casting ballots.~~ The election commissioner  
16 or county clerk may use vote counting devices and voting systems  
17 approved by the Secretary of State for tabulating the votes cast  
18 at any election. Vote counting devices shall include electronic  
19 counting devices such as optical scanners. Any new voting or  
20 counting system shall be approved by the Secretary of State prior  
21 to use by an election commissioner or county clerk. Notwithstanding  
22 any other provision of the Election Act, the Secretary of State may  
23 adopt and promulgate rules and regulations to establish different  
24 procedures and locations for voting and counting votes pursuant to  
25 the use of any new voting or counting system. The procedures shall

1 be designed to preserve the safety and confidentiality of each  
2 vote cast and the secrecy and security of the counting process, to  
3 establish security provisions for the prevention of fraud, and to  
4 ensure that the election is conducted in a fair manner.

5           Sec. 15. Section 32-1049, Reissue Revised Statutes of  
6 Nebraska, is amended to read:

7           32-1049 Any election commissioner or county clerk using  
8 a vote counting device to count ballots in a centralized location  
9 shall:

10           (1) Provide for the proper sealing of the containers and  
11 the security of the ballots when transported from each polling  
12 place to the centralized location and when removed from their  
13 containers and delivered to the personnel who operate the vote  
14 counting devices;

15           (2) Provide a process of counting which allows for the  
16 ballots of each precinct to be placed in a sealed container and  
17 placed in a secure location after the counting process has been  
18 completed;

19           (3) Provide for a method of overseeing the ballots that  
20 have been overvoted or damaged which does not involve judging voter  
21 intent to assure that these ballots have not been or will not be  
22 intentionally mismarked;

23           (4) Provide for a procedure for counting write-in votes  
24 when such votes and names of write-in candidates are to be counted  
25 and recorded;

1           (5) Provide for at least three independent tests to be  
2 conducted before counting begins to verify the accuracy of the  
3 counting process, which includes the computerized program installed  
4 for counting various ballots by vote counting devices, by (a)  
5 the election commissioner or county clerk, (b) the chief deputy  
6 election commissioner or a registered voter with a different party  
7 affiliation than that of the election commissioner or county clerk,  
8 and (c) the person who installed the program in the vote counting  
9 device or the person in charge of operating the device;

10           (6) Provide for storing and safeguarding the magnetic  
11 tapes or computer chips of the vote counting devices for the  
12 required period of time;

13           (7) Provide the appropriate security personnel or  
14 measures necessary to safeguard the secrecy and security of the  
15 counting process; and

16           ~~(8) When deemed necessary by the election commissioner~~  
17 ~~or county clerk, develop a procedure for picking up and counting~~  
18 ~~ballots during election day, and~~

19           ~~(9)~~ (8) Submit a written plan to the Secretary of State  
20 specifically outlining the procedures that will be followed on  
21 election day to implement this section. The plan shall be submitted  
22 no later than twenty-five days before the election and shall be  
23 modified, as necessary, for each primary, general, or special  
24 election.

25           Sec. 16. Original sections 32-230, 32-232, 32-235,

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1 32-612, 32-904, 32-906, 32-909, 32-1001, 32-1004, 32-1010,  
2 32-1012, and 32-1049, Reissue Revised Statutes of Nebraska, and  
3 sections 32-808, 32-1002, and 32-1041, Revised Statutes Cumulative  
4 Supplement, 2006, are repealed.

5           Sec. 17. The following sections are outright repealed:  
6 Sections 32-224, 32-234, 32-1011, 32-1019, 32-1020, 32-1021,  
7 32-1022, 32-1023, 32-1024, 32-1025, and 32-1026, Reissue Revised  
8 Statutes of Nebraska.